

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 482 of 1995

in

SPECIAL CIVIL APPLICATION No 1205 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
 2. To be referred to the Reporter or not? NO :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
 5. Whether it is to be circulated to the Civil Judge? : NO
NO

DIPAKKUMAR K PARIKH

Versus

R BALKRISHNAN

Appearance:

MR BIPIN I MEHTA for the Petitioner
MR JM THAKORE Advocate General with MR BY MANKAD
AGP for the Respondents Nos. 1, 2 & 3.
MR BN PATEL for the Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI and

Date of decision: 21/12/1999

ORAL JUDGEMENT (Per R.K.Abichandani, J.)

The petitioner, who is an Octroi Clerk of the former Halol Nagar Panchayat, which was converted into a Nagar Palika with effect from 15.4.1994, has alleged that respondents Nos.1, 2 & 3 have flouted the directions contained in the order made in Special Civil Application No.1205 of 1978 on 3.5.1983, by which a direction was issued on the State Government in the same terms in which it was issued by the Division Bench in R.K.SONI v. STATE OF GUJARAT reported in AIR 1977 GUJ. 76. According to the petitioner, even though in the earlier application for initiating contempt proceedings being Miscellaneous Civil Application No.2006 of 1994 it was stated by respondent No.3 in his affidavit-in-reply that the directions of the High Court will be complied with, some benefits were not given. In paragraph 11, it is stated that certain Resolutions therein regarding Group Insurance Scheme, House Rent Allowance, Promotional opportunities and benefit of appointment on compassionate grounds which were passed in favour of other Panchayat employees were not passed in favour of the employees of the said Panchayat.

2. The main contention that was raised while arguing this application by the learned counsel for the applicant is that the direction contained in R.K.SONI's judgment (supra), which came to be confirmed by the Supreme Court in STATE OF GUJARAT v. R.K.SONI reported in AIR 1984 SC 161, required the State Government to pay to the petitioners and the persons represented by them in that case the amounts payable to them as a consequence of rationalisation or revision of pay scales and allowances and other conditions of service as per the earlier Clauses (1) to (4) containing the directions. The learned counsel argued that, since the Division Bench had ordered the writ to issue in the same terms, that would include the direction of payment of the amount due as a consequence of rationalisation or revision of pay scale and allowances and other conditions of service, in pursuance of the directions contained in Clauses (1) to (4) in R.K.SONI's case (supra). It was contended that since Panchayat servants are also Government servants, the Government is liable to make payment even if the petitioner was never allocated from any earlier establishment and was appointed after formation of the new Panchayat. He submitted that it was already disclosed to the Court that the employees of the Halol

Nagar Panchayat were not allocated servants from any municipality and that they were appointed in the cadre after the Panchayat was constituted. It was submitted that notwithstanding this declaration, the Division Bench had extended the benefits given in R.K.SONI's case to the employees of Halol Nagar Panchayat.

3. The learned Advocate General appearing for the respondent - authorities submitted that the directions from the Division Bench have been duly complied with as stated in the affidavit of the Under Secretary sworn on 12.7.1995. It was submitted that the State Government had already directed payment of the consequential amounts to the employees concerned from the funds of the Panchayat. It was therefore submitted that there was no question of any violation of any direction given by the Court. He pointed out the direction given for payment of the amounts of difference which is contained in Clause (8) of the Resolution dated 30.1.1995 issued by the Government.

4. The contention of the respondent No.4 Nagar Palika, which was formerly a Nagar Panchayat is that, the Halol Nagar Palika is running under a great financial crunch and therefore it is not in a position to pay the difference of dues as claimed by the petitioners. In paragraph 6 of the affidavit-in-reply filed by the Chief Officer of respondent No.4 - Nagar Palika, it has been stated that, in view of the Government Resolution dated 31.3.1995, the employees of the Nagar Palika were entitled to revised pay fixation and that, as per that Resolution, the Nagar Palika was directed to pay the amount of difference from its own funds. It is stated that, in view of the pay fixation made by the District Development Officer, the Nagar Palika is liable to pay towards the total difference of arrears of Rs.60 to 65 lakhs to be paid to its employees and the source of income being less, it is not in a financial condition to pay the dues. In paragraph 7, it is stated that the Nagar Palika is trying its level best to obtain the amount as grant from the Government and therefore it had addressed a letter dated 17.4.1995 to the Government requesting for the grant. It is also stated that, by virtue of the Resolution dated 31.3.1995, the employees of the Nagar Palika are already paid their salaries in the revised pay scales from 1.4.1995. It will thus be seen that it was never the case of the respondent No.4 Nagar Palika that the amount was required to be paid by the State Government. The State Government had already issued orders regarding payment of the amount by the Nagar Palika from its own funds. The Nagar Palika never

raised any contention that it was not liable to pay under the directions issued by the Division Bench, or that the State Government was liable to pay the amount to its employees pursuant to the decision in Special Civil Application No.1205 of 1978; a contention which was strangely raised only at the time of arguments of this application by its counsel.

5. In its decision dated 3.5.1983, the Division Bench had in Special Civil Application No.1205 of 1978 issued the following direction:

" And we direct that a writ of mandamus shall issue directing the State Government in the same terms in which the writ was issued by the Division Bench of this Court in R.K.Soni's case (supra) so as to extend the benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions."

The emphasis of the direction clearly was on extending the benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions. All this has already been done as admitted by the learned counsel for the petitioner. The only grievance that remains was that payment was not actually made by the State Government and, on that issue, a contention was raised that it was for the State Government to actually pay the amount. This contention was sought to be fortified by the decision of the Supreme Court in STATE OF GUJARAT v. R.K.SONI (supra). In our opinion, such a contention is not at all warranted from the direction contained in Clause (5) which is reproduced in paragraph 24 of the said judgment at page 169 of the report. It will be seen from the very first paragraph of this judgment that the Hon'ble Supreme Court was specifically considering the grievance which was raised by the ex-municipal employees who were allocated. This is clear from the following observations in the very first paragraph of the judgment:

" On the one hand, there are lakhs of employees working under various Panchayat Institutions, call them Government servants or no, to whom the benefits of the recommendations of the two Pay Commissions, the Sarela and the Desai Commissions, have been extended, while on the other hand, there is a microscopic number

(comparatively) of about six thousand employees of the lowest category, also working under Panchayat Institutions, who are denied the benefits of those recommendations, on the sole ground of a birthmark, if we may so call it, since they are denied the benefits because before they came to work under the Panchayat Institutions, they were employed in municipalities while the others were Government servants to start with."

In Paragraph 24 of this judgment, the Hon'ble Supreme Court referred to the Gujarat Panchayat Service (Absorption Seniority Pay and Allowances) Rules, 1965 which provided for the equation of posts, fixation of seniority, scales of pay and allowances of "allocated employees". It noted that the Rule provided that every allocated employee holding a corresponding post immediately before the appointed day, shall be appointed to the equivalent post. It was also observed that unless equivalence of posts is first determined, by order, by the Government, the said Rules could not be effectively applied. The Government however did not make any order regarding equation of posts of the staff in the local cadre and the fixation of their scale of pay although such orders were made in respect of posts of other cadres. It was observed that the State Government did not also extend to the staff borne on the local cadre of the panchayat service the benefit of revision of scales of pay etc. which were made on the basis of the recommendations of the two Pay Commissions though such benefit was extended to the District and Taluka cadres; nor did the Government make any order providing for promotional avenues to employees of the local cadre. It was observed that, aggrieved by the deaf ear turned to their representations, certain ex-municipal employees included in the local cadre of the Panchayat Service for themselves and on behalf of other ex-municipal employees, had filed a writ petition. It will thus be noticed that the directions in Clause (5) regarding payments were specifically given in respect of the petitioners and the persons whom they represented, as a consequence of rationalisation or revision, and the directions contained in Clauses (1) to (4), which also were given in favour of the petitioners and the persons whom they represented. The Division Bench in the petition, which was filed by Halol Nagar Panchayat, directed that the writ was to issue so that the benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions were extended on the same terms in

which they were issued in R.K.SONI's case (supra). Admittedly, the employees of the Halol Nagar Palika were not allocated municipal employees. They were all for the first time borne on Nagar Panchayat's service after its constitution. It will be clear from the observations which were made in paragraph 69 of the decision in R.K.SONI's case reported in AIR 1977 GUJ.76 that a note was taken of the provisions of Section 204 of the Gujarat Panchayats Act, which provided that, subject to the rules which may be made by the State Government in that behalf, it was the statutory obligation of the concerned panchayats to bear the expenditure towards pay and allowances and other benefits of all officers and servants serving for the time being under them.

6. The Resolutions which have been made in compliance with the directions given by the Division Bench in the case of employees of Halol Nagar Panchayat have been placed on record. In the affidavit of Mr.R.S.Arya, Under Secretary to the Government, it has been stated that Halol Nagar Panchayat was converted into a municipality from 15.4.1994 and therefore the service conditions of its employees were governed under the provisions of the Gujarat Municipalities Act, 1963. It is stated that so far as the benefits which were required to be granted under the directions given by the High Court were concerned, the State Government had issued various Resolutions granting benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions as directed by the Court. In the earlier application for initiating contempt proceedings being Miscellaneous Civil Application No.2006 of 1994, the Division Bench of this Court on 9.2.1995, in view of the affidavit filed by Mr.Mustafa Pathan, Deputy Secretary of the State Government stating that the directions will be complied with in their entirety, rejected the application.

7. In the Special Leave Petition preferred against the decision in Special Civil Application No.1205 of 1978, the Hon'ble Supreme Court, by its order dated 3.9.1993, on finding force in the contention of the learned counsel appearing for the State that there should be an order of allocation made by the Government of the Gram Panchayat employees to the Gram Panchayat and until then they cannot be treated as Government Servants, on the facts of the case, held that it need not go into the question of allocation as it was not the contention raised though an elaborate counter was filed. The Supreme Court observed that: "therefore, that issue is

left open." It will be noted from the affidavit-in-rejoinder dated 22.10.1999 filed by the petitioner that the petitioner himself has stated in the first paragraph that, since Halol Nagar Panchayat was not converted from a municipality, strictly speaking, the judgment in R.K.SONI's case (supra) does not directly apply to the employees of the panchayat. From the Resolutions which are placed on record, it is clear that the benefits relating to equation of posts, promotions, fixation of pay scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions have already been extended as per the directions given by the Court in Halol Nagar Panchayat's case in Special Civil Application No.1205 of 1978. The State Government has also issued a direction that payment has to be made by the panchayat from its own funds. There is therefore no wilful disobedience of any of the directions given in favour of the employees of Halol Nagar Panchayat, which itself had never chosen to raise such contention to the effect that the State Government should pay its employees from its coffers though they were not allocated employees. In this view of the matter, there is no substance in this application. Rule is discharged with no order as to costs.

Sd/-

Sd/-

(KMG Thilake)

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